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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,122	11/28/2001	Michael W. Johnson	80113.0230	3626

20480 7590 07/03/2003

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EXAMINER

LABAZE, EDWYN

ART UNIT PAPER NUMBER

2876

DATE MAILED: 07/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**DETAILED ACTION**

1. Receipt is acknowledged of amendments filed on 4/17/2003.

***Election/Restrictions***

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-19, and 27-31 drawn to a smart, recite an apparatus and method comprising of a dual battery one non-rechargeable and one rechargeable battery disposed in the smart card, and an interface for electrically coupled the smart card with a host, classified in class 235, subclass 492.
  - II. Claims 20-26, drawn to the set-top cable box, refer to the specifications of a primary non-rechargeable battery, means for preventing discharge of a secondary battery, access control data for a cable television system, classified in class 725, subclass 1 and 6.

The inventions are distinct, each from the other because of the following reasons:

3. Inventions of group 1 and group 2 are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because a smart card. The subcombination has separate utility such as a set-top cable box.
4. Because these inventions are distinct for the reasons given above and the search required for I is not required for group II, restriction for examination purposes as indicated is proper.

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5. A telephone call was made to Mr. Steven L. Nichols on Monday June 30<sup>th</sup>, 2003 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

*Conclusion*

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to EDWYN LABAZE whose telephone number is (703) 305-5437. The examiner can normally be reached on 7:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (703) 305-3503. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1782.

el  
Edwyn Labaze  
Patent Examiner  
Art Unit 2876  
June 30, 2003



THIEN M. LE  
PRIMARY EXAMINER